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Supreme Court, U.S.
FILED
MAR 20 1987
JOSEPH F. SPANIOL, JR.
CLERK

Case Number: _____

SUPREME COURT OF
THE UNITED STATES

October 1986 Term

JUNE WOMBLE,

Petitioner,

vs.

SEABOARD SYSTEM RAILROAD,

Respondent.

On Writ of Certiorari to the
United States Court of Appeal
Eleventh Circuit

JOHN F. MacLENNAN

Counsel of Record
for Petitioner

1920 San Marco Blvd.
Jacksonville, FL 32207
(904) 398-1229

QUESTION PRESENTED

Should a Railway employee who is not in a collective bargaining unit, who does not have a collective bargaining representative, and who is not and has never been a member of any labor union, be required to have her claim for wrongful discharge determined by the National Railroad Adjustment Board (a Board created by the railway carriers and their employees acting through their labor union representatives) where the basis for the unlawful discharge claim is not a collective bargaining agreement and there was no grievance procedure available to the employee?

CERTIFICATE OF INTERESTED PARTIES

I hereby certify that:

1. The judge below was the Honorable Howell W. Melton.

2. Plaintiff below, petitioner in this Court, is June Womble.

3. Counsel for plaintiff below, petitioner in this court, is John F. MacLennan, Kattman, Eshelman & MacLennan, P.A.

4. Defendant below, respondent in this Court, is Seaboard System Railroad.

5. Counsel for defendant below, respondent in this court, are James F. Moseley and Thomas C. Sullivan, Taylor, Moseley & Joyner.

6. Counsel for defendant below, respondent in this court, is Edward A. Charron, Seaboard Coast Line Railroad Company.

Respectfully submitted,

John F. MacLennan

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Attorneys for Petitioner

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CITES TO THE DISTRICT COURT AND COURT OF APPEALS

The opinion of the district court is unpublished. The opinion of the court of appeals is published at 804 F. 2d 635 (11th Cir. 1986).

STATEMENT OF GROUNDS ON WHICH JURISDICTION INVOKED

The final judgment by the District Court was entered on May 30, 1986. The decision of the Court of Appeals, Eleventh Circuit, affirming the District Court was entered on November 19, 1986. The order denying Womble's petition for rehearing en banc was entered on December 22, 1986.

Petitioner is authorized to seek review of this matter by certiorari pursuant to 28 U.S.C., Section 2101.

STATUTES AND REGULATIONS INVOLVED

The Railway Labor Act, 45 U.S.C., Section 151, et. seq.

The text of the relevant statutory provisions is found in the appendix to this petition.

STATEMENT OF THE CASE AND THE FACTS

This action was brought by plaintiff, June Womble, ("Womble") against defendant Seaboard System Railroad, ("Seaboard") alleging wrongful termination from employment and fraudulent misrepresentation. Seaboard removed the action to Federal District Court and filed a motion to dismiss. The District Court by order dated May 30, 1986 dismissed the action holding that Womble must exhaust administrative remedies provided by the Railway Labor Act. Womble timely appealed by notice dated June 16, 1986. The United States Court of Appeals for the Eleventh Circuit affirmed the Federal District Court by order

dated November 19, 1986. Womble's petition for rehearing and rehearing en banc was denied by order of the Court dated December 22, 1986.

Since the District Court decision dismissed Womble's complaint the facts contained in this statement are taken from the Complaint unless otherwise noted.

Womble commenced employment with Seaboard or its predecesor in interest on May 1, 1965. At that time Womble was employed by a subsidiary of Atlantic Coastline Railroad Company. As a result of a merger between Atlantic Coastline and Seaboard Airline Railroad Company employees such as Womble were given certain specific

protections with respect to job security. Those protections included an agreement that employees such as Womble would not be terminated from their employment except by death, resignation, discharge for cause, or retirement.

Seaboard is the successor in interest to the Atlantic Coastline Railroad and is bound by the agreements previously made which protected Womble. Womble continued to be employed by Coastline and its successors in interest until approximately December 15, 1985. At that time, Womble's employment was terminated. This termination was not as a result of death, resignation, discharge for cause

or retirement and was therefore a breach of the agreements and protections to which Womble was entitled. As a result of this termination Womble lost wages, insurance and other fringe benefits, retirement benefits and was otherwise damaged.

It was represented to Womble by her employer that Womble would not be terminated except for death, resignation, discharge for cause or retirement. Those representations were false and known by her employer at the

time they were made to be false. Womble relied upon those representations in determining to continue her employment with her employer. As a result of those fraudulent misrepresentations Womble has been damaged by the loss of wages, fringe benefits and the other benefits of her employment.

Womble was not represented by a collective bargaining representative and it was accepted by the parties and by the District Court that Womble's complaint did not arise out of a collective bargaining agreement and she was not represented by any collective bargaining agent.

BASIS FOR FEDERAL JURISDICTION

This action was removed by Seaboard to the United States District Court, Middle District of Florida, Jacksonville Division, from the Circuit Court, in and for the Fourth Judicial Circuit, State of Florida, based upon Seaboard's statement that the case was one arising under the Railway Labor Act, 45 U.S.C., Section 151, et. seq.

ARGUMENT

THIS COURT SHOULD DETERMINE WHETHER OR NOT A RAILWAY EMPLOYEE WHO IS NOT IN A COLLECTIVE BARGAINING UNIT, WHO DOES NOT HAVE A COLLECTIVE BARGAINING REPRESENTATIVE, AND WHO IS NOT AND HAS NEVER BEEN A MEMBER OF ANY LABOR UNION, SHOULD BE REQUIRED TO HAVE HER CLAIM FOR WRONGFUL DISCHARGE DETERMINED BY THE NATIONAL RAILROAD ADJUSTMENT BOARD (A BOARD CREATED BY THE RAILWAY CARRIERS AND THEIR EMPLOYEES ACTING THROUGH THEIR LABOR UNION REPRESENTATIVES) WHERE THE BASIS FOR THE UNLAWFUL DISCHARGE CLAIM IS NOT A COLLECTIVE BARGAINING AGREEMENT AND THERE WAS NO GRIEVANCE PROCEDURE AVAILABLE TO THE EMPLOYEE.

The Court of Appeals affirmed the District Court's determination that Womble is required to have her claim for wrongful discharge determined by the National Railroad Adjustment Board even though Womble has never been in a collective bargaining unit, has never had a collective bargaining representative, and has never been a member of any labor union. It is undisputed that Womble's claim did not arise out of a collective bargaining agreement and there was no grievance procedure available to her.

Womble submits that this Court should determine the question presented because the decision of the Court of Appeals and the District

Court is in conflict with prior decisions of this Court and another Court of Appeals.

This Court has previously considered the scope of the Railway Labor Act in Williams v. Jacksonville Terminal Co., 315 U.S. 386, 62 S. Ct. 659 (1942). There this Court was concerned with a dispute involving whether or not the Minimum Wage Act applied to certain railway employees. This Court noted at page 399:

> "The object of the Act is to avoid interruption to commerce through the promotion of free association among employees for the purpose of settling disputes between them and the carriers . . . independent individual contracts are not affected by the Act."
> (emphasis supplied)

The Court went on to state at page 402:

> "The Railway Labor Act dealt with collective bargaining agreements only and not with the employment of individuals."

This Court's statement in Williams remains the law and therefore the Railway Labor Act has no applicability to Womble's action since her claim does not relate to a collective bargaining agreement or arise out of collective bargaining in any way.

This Court has also previously determined that disputes contemplated by the Railway Labor Act to be determined by the National Railroad Adjustment Board are, as Section 153 of the Act provides:

> "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . " (emphasis supplied)

This Court has previously discussed the type of disputes which arise under the Railway Labor Act and in both Elgin J&E Railway Co. v. Burley, 325 U.S. 711, 65 S. Ct. 1282 (1945) and in Brotherhood of Railroad Trainmen v. Chicago River and Indiana R.R., 353 U.S. 30, 77 S. Ct. 635 at page 33 (1957) the Court stated that those disputes which will be determined by the National Railroad Adjustment Board are disputes which contemplate the existence of a collective bargaining agreement since

the disputes arise over the meaning or application of a particular collective bargaining agreement. The Seventh Circuit has very recently had occasion to consider the administrative remedies provided by the Railway Labor Act in Lancaster v. Norfolk & Western Ry. Co., 773 F. 2d 807 (7th Cir. 1985). There the Court stated:

> "The business of arbitrators, commercial or labor, is to interpret contracts . . . This is as true of arbitration under the Railway Labor Act as under the Taft Hartley Act or the United States Arbitration Act . . . granted, the Railway Labor Act defines the arbitrators' domain as employment disputes "growing out of grievances or out of the interpretation or application of ("collective bargaining") agreements . . . which seem to say that more than contract interpretation is covered. But

> this language is merely redundant. A "grievance" is a claim of violation of the collective bargaining agreement. Congress had no intention of making a grievance a separate basis for arbitration from disputes over the interpretation or application of the collective bargaining contract . . . Later cases make clear that a grievance is a dispute over rights created by the collective bargaining agreement." (emphasis supplied)

Since it is undisputed that Womble's claim did not arise out of any collective bargaining agreement, the lower courts erred in requiring her to proceed under the RLA.

Womble is not a member of any collective bargaining unit and therefore has no collective bargaining representative. Thus, her action is

distinguishable from that in Andrews v. Louisville and Nashville Railroad Co., 406 U.S. 320 (1972) which involved an employee who was a member of the collective bargaining unit. The Second Circuit recognized this distinction in Gorrill v. Icelandair/Flugleidir, 761 F. 2d 847 (2d Cir. 1985). The Second Circuit dismissed Icelandair's argument that the action was governed by the Railway Labor Act noting that the Adjustment Board for airline disputes had been created by the carrier and its employees acting through their representatives. Since Icelandair's employees were not unionized they had no representatives and therefore were not required to pursue their claims

through the Adjustment Board. This same argument applies with equal force to Womble.

The only prior decision of a Court of Appeals that Womble is aware of which suggested that an employee who was not a member of a union still had to pursue remedies available under the Railway Labor Act is Thomas v. New York, Chicago and St. Louis Railroad Co., 185 F. 2d 614 (6th Cir. 1950). In that case the employee apparently voluntarily submitted his dispute to the National Railroad Adjustment Board. The issue of whether or not such submission was required was therefore not actually litigated by the parties.

Thus the Court's statement that the employee was required to go through the Adjudgment Board was dicta.

It should be noted that under the decision of the Court of Appeals, Womble's claim will in essence receive its final determination by the Adjustment Board. Pursuant to the Act the decision of the Board is subject to only very limited review. Thus, Womble will have no opportunity for a judicial determination to be made as to her claim, being relegated instead to a determination by a Board composed of the carriers on one side and representatives of labor organizations on the other. The fundamental unfairness of this procedure is clear

given that the labor organization representatives, who supposedly will represent the interest of Womble, will have no incentive to do so since Womble is neither a member of any labor organization nor is even a member of a collective bargaining unit eligible to be a member of a labor organization.

This Court has judicially imposed on labor unions a duty of fair representation under both the National Labor Relations Act and the Railway Labor Act. Vaca v. Sipes, 386 U.S. 171, 17 L. Ed. 2d 842, 87 S. Ct. 903 (1967) However, since no labor organization has a duty to represent Womble in connection with the

proceeding before the Adjustment Board, clearly Womble will have no possible failure to represent claim, which claim could result in a determination on the merits by a court of Womble's claim.

It is also important to note that the determination by the Adjustment Board will in essence be final since judicial review of an Adjustment Board decision is not on the merits but is limited to the criteria set forth in the Railway Labor Act itself. 45 U.S.C., Section 153, Gunther v. San Diego and A.E.R. Co., 382 U.S. 257, 15 L. Ed. 2d 308, 86 S. Ct. 368 (1965). Thus, unless this Court rules otherwise,

Womble will have her claim for wrongful discharge determined by a Board set up by the carriers and the labor unions, neither of which will have any incentive to make certain Womble's claim is given the consideration it is due. Such a procedure must be seen as fundamentally unfair and this Court should thus rule that Womble is not required to submit her dispute to the Adjustment Board.

CONCLUSION

For all of the reasons stated above, petitioner respectfully requests this Court grant the petition and consider the issues raised by the petition on the merits.

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused three copies of the foregoing Writ of Certiorari to be served on each counsel for respondent, by first-class mail, postage prepaid, as follows:

Edward A. Charron
Seaboard Coast Line Railroad Co.
500 Water Street
Jacksonville, FL 32202

and

James F. Moseley, Esq.
Taylor, Moseley & Joyner
501 West Bay Street
Jacksonville, FL 32202

Dated this 19th day of March, 1987.

Kattman, Eshelman & MacLennan, P.A.
1920 San Marco Boulevard
Jacksonville, FL 32207
(904) 398-1229

By: _____
John F. MacLennan
Counsel for Petitioner

A P P E N D I X

APPENDIX

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WOMBLE v. SEABOARD SYSTEM R.R.

June WOMBLE, Plaintiff-Appellant,

v.

SEABOARD SYSTEM RAILROAD,

Defendant-Appellee.

No. 86-3402

Non-Argument Calendar.

United States Court of Appeals,

Eleventh Circuit.

Nov. 19, 1986.

Appeal from the United States District Court for the Middle District of Florida; Howell W. Melton, Judge.

Before GODBOLD, VANCE and JOHNSON, Circuit Judges.

PER CURIAM:

The plaintiff-appellant, an employee of the Seaboard System Railroad, defendant-appellee, was terminated from her employment in December 1985. She filed a civil action in the United States District Court for the Middle District of Florida claiming lost wages, insurance benefits, retirement benefits, and the other benefits to which she, as an employee, was entitled. The district court dismissed the case without prejudice holding that a non-union employee, such as the plaintiff, was entitlted to pursue, and therefore required to pursue, her administrative remedies as provided by the Railway Labor Act, 45 U.S.C.A., Section 151, et seq.

On the basis of Andrews v. Louisville & Nashville Railroad Co., 406 U.S. 320, 92 S.Ct. 1562, 32 L.Ed.2d 95 (1972); Radar v. United Transportation Union, 718 F.2d 1012 (11th Cir.1983), and Thomas v. New York, Chicago & St. Louis R. Co., 185 F.2d 614 (6th Cir.1950), the judgment of the district court is AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JUNE WOMBLE,

Plaintiff,

vs. Case No. 86-140-Civ-J-12

SEABOARD SYSTEM RAILROAD,

Defendant.

ORDER

Plaintiff Womble filed this action in state court against her former employers Seaboard System Railroad ("Seaboard").[1]

---

[1] Plaintiff was hired in 1965 by a subsidiary of Atlantic Coast Line Railroad. Complaint paragraph 3. A few years later Atlantic Coast Line and Seaboard Air Line Railroad Company agreed to merge. Id. Paragraph 4. Plaintiff alleges that defendant is a successor in interest to Atlantic Coast Line Railroad and is bound by agreements made by Atlantic. Id. Paragraph 8. Defendant complains that plaintiff has made insufficient factual allegations indicating she was employed by Seaboard System Railroad. The Count finds the complaint's allegations are sufficient.

Womble's two-count complaint is based on claims of wrongful termination and fraudulent misrepresentations. Seaboard removed the case and moved to dismiss on the basis that Womble failed to exhaust her administrative remedies as required by the Railway Labor Act ("RLA"), 45 U.S.C., Section 152 (1982).

The RLA provides a framework for resolving disputes between an employee and a carrier. Seaboard is a carrier an Womble is an employee within the meaning of the RLA. 45 U.S.C., Section 151 (1982). Disputes between an employee and carrier which arise out of the interpretation or application of collective bargaining agreements are known as "minor disputes." Kashchak v. Consolidated Rail Corp., 707 F. 2d 902, 904 (6th Cir. 1983).

The National Railroad Adjustment Board has exclusive jurisdiction over the resolution of minor disputes. Id. at 905. The United States Supreme Court has held wrongful termination of employment is a minor dispute which must be processed through the grievance and arbitration procedures of the RLA. Andrews v. Louisville & Nashville Railroad Co., 731 F. 2d 342 (6th Cir. 1984) (NRAB is the exclusive forum for resolving minor disputes "arising out of a railroad employment relationship"); Radar v. United Transportation Union, 718 F. 2d 1012 (11th Cir. 1983) (Andrews requires exhaustion of administrative remedies, without exception, prior to pursuing an action in federal court); Evans v. Central of Georgia Railroad Co., 619 F. Supp. 1364 (N.D. Ga. 1985).

Plaintiff attempts to distinguish Andrews and its progeny on the ground that those cases involved employees who were members of collective bargaining units represented by unions as their collective bargaining agents. Plaintiff states that her complaint does not arise out of any collective bargaining agreement nor is she represented by any collective bargaining agent; therefore, the RLA is inapplicable to her case.

This narrow interpretation of the scope of the RLA finds no support in the Act itself or the caselaw interpreting the Act. The RLA does not limit the definition of employees to only those who are members of a collective bargaining unit. 45 U.S.C., Section 151 (1982) ("employee" includes every person in the service of a carrier). In

Thomas v. New York, Chicago & St. Louis Railroad Co., the Court held that a claim based on wrongful discharge brought by a non-union employee against the carrier was subject to the provisions of the RLA. 185 F. 2d 614 (6th Cir. 1950). Plaintiff has failed to cite any cases in support of her interpretation of the scope of RLA. The Eleventh Circuit has broadly declared that in cases of wrongful discharge, Andrews requires an exhaustion of administrative remedies, without exception, before pursuing an action in federal court. (emphasis added). Radar, 718 F. 2d at 1014.

Plaintiff does not assert that it would be futile to pursue the RLA administrative remedies or that such remedies would be inadequate.

Glover v. St. Louis-San Francisco

Railway Co., 393 U.S. 324, 330 (1969) (RLA administrative remedies need not be exhausted if the remedy would be inadequate or the process futile).

Because plaintiff must first exhaust her administrative remedies as required by the RLA, it is

ORDERED AND ADJUDGED:

1. That defendant's motion to dismiss is hereby granted;

2. That plaintiff's motion to remand is hereby rendered moot; and

3. That this action is hereby dismissed without prejudice.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 30th day of May, 1986.

/s/ Howell W. Melton
UNITED STATES DISTRICT JUDGE

Copies To:

Counsel of Record

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3402
Non-Argument Calendar

JUNE WOMBLE,

Plaintiff-Appellant,

versus

SEABOARD SYSTEM RAILROAD,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Florida

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Before GODBOLD, VANCE and JOHNSON
Circuit Judges

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was

taken under submission by the Court upon the record and briefs on file, pursuant to Circuit Rule 23;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby, AFFIRMED;

It is further ordered that plaintiff-appellant pay to defendant-appellee, the costs on appeal to be taxed by the Clerk of this Court.

Entered: November 19, 1986

For the Court: Miguel J. Cortez, Clerk

By:/s/ David Malland
Deputy Clerk

ISSUED AS MANDATE: JAN 06 1987

TIME STAMPED: 12/22/86

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 86-3402

JUNE WOMBLE,

Plaintiff-Appellant,

versus

SEABOARD SYSTEM RAILROAD,

Defendant-Appellee.

Appeal from the United States
District Court for the Middle
District of Florida

ON PETITION FOR REHEARING AND
SUGGESTION FOR REHEARING EN BANC
(Opinion _____, 11 Cir., 198__,
_____F.2d_____).

Before GODBOLD, VANCE and JOHNSON,
Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ Frank M. Johnson, Jr.
United States Circuit Judge

REHG-6
(Rev. 6/82)

Statutes:

Railway Labor Act, 45 U.S.C.

Section 151a. General purposes

The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to

provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

Section 153. National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and awards; judicial review. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act (enacted June 21, 1934), and it is hereby provided -

(a) That the said Adjustment Board shall consist of thirty-four members, seventeen of whom shall be selected by

the carriers and seventeen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act (45 USCS Sections 151a, 152).

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act (enacted June 21, 1934), shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the

disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be

forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties except that the order of the division may set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for

fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code (28 USCS, Sections 1254, 1291).